

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ELBURN TEMPLETON,
individually and on behalf of
all others similarly situated
who consent to their
inclusion in this collective
action,

10-CV-607-BR

ORDER

Plaintiffs,

v.

FRED MEYER STORES, INC.,

Defendant.

C. RYAN MORGAN

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BROWN, Judge.

This matter comes before the Court on Defendant's request for the Court to appoint a third-party administrator to notify putative class members of the pendency of this matter.

On September 23, 2010, the Court issued an Opinion and Order (#46) in which it granted Plaintiff's Motion to Certify the Class conditionally and directed the parties to confer as to the form of notice to putative class members and the procedure for notifying same. On October 4, 2010, the parties submitted a Joint Status Report (#47) after conferral in which the parties stipulated to the form of notice to be delivered to putative

class members. The parties also stipulated to the process for notifying potential plaintiffs, but they did not agree as to whether Plaintiff's counsel or a third-party administrator should deliver the notices to and track responses from potential class members.

On October 7, 2010, the Court granted the parties' request to submit to the Court a concise statement of the parties' respective positions as to the use of a third-party administrator. On October 19, 2010, the parties submitted a Joint Status Report (#52) in which the parties set out their positions.

In the Joint Status Report (#52), Defendant requests the Court to appoint a third-party administrator to notify putative class members and to track their responses to the notice. Defendant maintains a third-party administrator will better protect the sensitive personal information of Defendant's former and current Loss Prevention Managers such as Social Security numbers that may be required if it becomes necessary to search for a former employee's new address. In any event, Defendant maintains Plaintiff and the putative class members will not be burdened by the use of a third-party administrator because Defendant has agreed to assume unconditionally the financial responsibility for the use of a third-party administrator in this matter and also agreed not to seek reimbursement of any such

costs from class members. Although the potential cost-burden to Plaintiff of using a third-party administrator here was of concern (such cost generally has been one of the main bases for refusal by the courts to approve the use of third-party administrators, *see, e.g., Bados Madrid v. Peak Constr. Inc.*, No. 2:09-CV-00311 JWS, 2009 WL 2983193, at *2 (D. Ariz. Sept. 17, 2009)(declining to appoint a third-party administrator as an unnecessary imposition of costs on the plaintiffs)), Defendant's willingness to bear the costs satisfies that issue in this case.

Nonetheless, Plaintiff also opposes the use of a third-party administrator on the ground that Defendant's privacy concerns are unwarranted. Plaintiff contends any privacy concerns should be minimal because Plaintiff's counsel are familiar with and experienced in administering notices to conditionally certified classes, and, moreover, Plaintiff is entitled to the names and contact information for all putative plaintiffs as part of discovery. *See, e.g., Gerlach v. Wells Fargo & Co.*, No. C 05-0585 CW, 2006 WL 824652, at *7 (N.D. Cal. Mar. 28, 2006). Thus, Plaintiff contends there is no compelling reason to appoint a third-party administrator due to privacy concerns.

Although Plaintiff is correct that he likely will discover the names and addresses of all potential class members, it is in the Court's discretion to appoint a third-party administrator for the purposes of facilitating the "process of joining multiple

parties in a manner that is orderly [and] sensible." See *Hoffman-La Roche Inc. v. Sperling*, 493 U.S. 165, 169-71 (1989). In light of the fact that the costs of appointing a third-party administrator will not burden the class in this matter and a third-party administrator such as The Garden City Group¹ can facilitate the "process of joining multiple parties in a manner that is orderly [and] sensible," the Court, in the exercise of its discretion, **GRANTS** Defendant's request to appoint The Garden City Group as third-party administrator for purposes of notifying putative class members in this action.

As requested by the parties, Plaintiff is to receive all completed consent forms and to file those forms with the Court. Any other discovery matters will be taken up by the Court as they arise.

Because the issues relating to notice to class members have been resolved, the Court **DIRECTS** the parties (1) to proceed with the notice process, (2) to confer concerning a proposed case-management plan and schedule, and (3) to submit **no later than November 12, 2010**, their joint proposal for a case-management plan and schedule for this matter, after which the Court will set

¹ The parties agree if the Court appoints a third-party administrator, the Court should appoint The Garden City Group.

a Rule 16 scheduling conference.

IT IS SO ORDERED.

DATED this 26th day of October, 2010.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge